



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2005

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR2005-05520

Dear Mr. Gambrell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227962.

The City of Houston (the "city") received a request for information relating to police calls involving two specified street addresses and three named individuals. You inform us that some of the requested information will be released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We initially note that Exhibits 8, 9, and 14 do not appear to involve either of the specified addresses or any of the named individuals.¹ Thus, these exhibits are not responsive to this request for information. Therefore, this decision does not address the public availability of Exhibits 8, 9, and 14, and they need not be released to the requestor.

Next, we address your claim under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This

¹In this instance, the requestor has provided both the names and the birth dates of the individuals about whom she seeks information. Although Exhibits 8, 9, and 14 contain one of the names provided by the requestor, the birth date of the individual named in those documents does not correspond to the birth date that the requestor provided.

exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a governmental entity is asked to compile criminal history information with respect to a certain individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993).

In part, this request is for unspecified law enforcement information relating to any one of three named individuals. In that respect, this request implicates these individuals' rights to privacy. Therefore, to the extent that the city maintains any information that relates to any of the named individuals as a possible criminal suspect, arrested person, or defendant and that does not involve either of the specified street addresses, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

You also raise section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that Exhibits 2, 3, 6, and 7 relate to cases that are inactive pending additional leads. You explain, however, that the statutes of limitations have not expired and that the investigations may be reactivated once additional leads are developed. You also inform us that Exhibit 11 relates to an open and active criminal prosecution. Based on your representations, we find that section 552.108(a)(1) is applicable to Exhibits 2, 3, 6, 7, and 11. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. — Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if

the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication.

You state that Exhibit 4 relates to a criminal investigation that concluded in a determination by the Harris County District Attorney's Office to decline accepting charges. You state that Exhibit 10 relates to an investigation that concluded in a determination by the Houston Police Department to discontinue the investigation due to the complainant's failure to pursue charges. Based on your representations, we find that section 552.108(a)(2) is applicable to Exhibits 4 and 10.

We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city must release basic information with respect to Exhibits 2, 3, 4, 6, 7, 10, and 11, including detailed descriptions of the offenses involved, even if the information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the information in Exhibits 2, 3, 4, 6, 7, 10, and 11 under section 552.108 of the Government Code.

In summary: (1) any information maintained by the city that relates to any of the named individuals as a possible criminal suspect, arrested person, or defendant and that does not involve either of the specified street addresses is private under *Reporters Committee* and must be withheld under section 552.101 of the Government Code; and (2) except for the basic information that must be released under section 552.108(c), the city may withhold Exhibits 2, 3, 4, 6, 7, 10, and 11 under section 552.108 of the Government Code. As we are able to make these determinations, we do not address section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

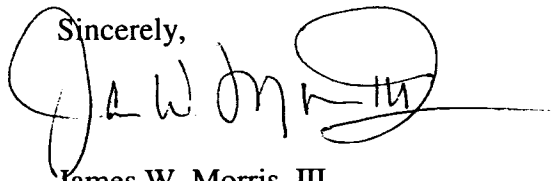
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/krl

Ref: ID# 227962

Enc: Submitted documents

c: Ms. Pamela K. Sanders
495 Browders Loop
New Waverly, Texas 77358-5326
(w/o enclosures)